

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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Civil Action No.

FILED  
U.S. DISTRICT COURT  
GREENSBORO, NC

GARDENDANCE, INC.  
437 Dimmocks Mill Rd  
Hillsborough, NC 27278

Plaintiff

v.

WOODSTOCK COPPERWORKS, LTD.  
Serve: Keith Wolgamuth, Registered Agent  
1450 Hinckley Hills Rd.  
Hinckley, OH 44233

and

The Royal Gardens of Charlotte, Inc.  
Serve Jared Adam Sweet, Registered Agent  
1101 Belgrave Place  
Charlotte NC 28203

Defendants

**1:04CV00010**  
**COMPLAINT FOR INJUNCTIVE**

**RELIEF, COMPENSATORY**  
**AND PUNITIVE DAMAGES;**  
**JURY TRIAL DEMANDED**

**I.**

**Nature of the Case**

1. This is a case for copyright infringement, trade dress infringement and unfair competition.

**II.**

**Parties**

2. Plaintiff Gardendance, Inc. is a North Carolina corporation.
3. Defendant Woodstock Copperworks, Ltd. is an Ohio corporation actively engaged in business in the state of North Carolina, and in the Middle District of North Carolina.

4. Defendant The Royal Gardens of Charlotte, Inc. is a North Carolina corporation.

### **III.**

#### **Jurisdiction**

5. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 (federal question) and 1338 (copyrights, patents and trademarks).

### **IV.**

#### **Factual Allegations**

6. Plaintiff copyrighted its Copper Tiki Torch on March 3, 1999, U.S. Copyright Registration No. VA 967-403.

7. Woodstock Copperworks, Ltd., has copied and is selling commercially a torch design that is virtually identical to plaintiff's copyrighted torch.

8. Todd Wolgamuth, on behalf of Woodstock Copperworks, Ltd., has visited numerous trade shows attempting to sell, and actually taking deposits and sales for copper torches identical to plaintiff's copyrighted torch. Woodstock Copperworks, Ltd maintains an Internet site to sell copper torches in North Carolina and nationally. Woodstock Copperworks, Ltd. supplies copper torches to other online retailers who sell copper torches in North Carolina and nationally

9. Woodstock Copperworks, Ltd. has knowingly copied plaintiff's torch design for the purpose of diverting sales and profits from Gardendance to Woodstock Copperworks, Ltd.

10. Gardendance, Inc. copper torches have been and continue to be marked with the notation " Copyright Gardendance, Inc. All rights reserved."

11. Plaintiff is well-known nationwide for the look, feel and design of its Copper Tiki Torches.

12. Plaintiff's torches have acquired secondary meaning.

13. Defendants and their agents copied plaintiff's torches and have been selling them

throughout the United States.

14. Defendant Woodstock Copperworks, Ltd. copied the look and feel, shape and design of plaintiff's Copper Tiki Torches.

15. As a result of quality work, long experience and skill in creating and marketing the plaintiff's copper torches, plaintiff acquired a reputation of excellent quality and is recognized for its high-quality products. Plaintiff commanded and still commands, an extensive sale of these items, that is and has been a source of profits to it.

16. Plaintiff has established trade dress rights to its Copper Tiki Torches.

## V.

### **First Cause of Action: Copyright Infringement**

17. Plaintiff incorporates by reference paragraphs one through 16, inclusive.

18. Plaintiff obtained a copyright from the U.S. Copyright Office.

19. Defendant The Royal Gardens of Charlotte, Inc. has knowingly been selling the Woodstock torches in North Carolina in violation of the copyright laws.

20. Defendants intentionally infringed the copyright of plaintiff's U.S. Copyright Registration No. VA 967-403.

## VI.

### **Second Cause of Action: Trade Dress Infringement**

21. Plaintiff incorporates by reference paragraphs one through 20, inclusive.

22. Plaintiff has developed a reputation in the industry for the distinctive look, feel and design of its copper torches.

23. Defendants have infringed on plaintiff's trade dress in violation of the Lanham Act by copying the look and feel and design of copper torches.

24. Consumers and retail stores confuse the plaintiff's Copper Tiki Torches with Woodstock Copperworks, Ltd. torches.

25. This confusion has caused substantial harm to plaintiff in terms of lost sales and diminished reputation for quality.

## **VII.**

### **Third Cause of Action: Unfair Competition**

26. Plaintiff incorporates by reference paragraphs one through 29 inclusive.

27. Without the consent or approval of plaintiff, defendant Woodstock Copperworks, Ltd. has wrongfully misappropriated, sold and distributed unauthorized duplications of plaintiff's Copper Tiki Torches..

28. Defendants' copies are inferior to plaintiff's in craftsmanship and appearance, but have virtually identical shapes, materials and designs as plaintiff's designs.

29. Stores selling plaintiff's designs, and consumers, have been confused by defendant Woodstock Copperworks, Ltd. products, believing that the plaintiff was the source of the illegal copies.

30. As a direct and proximate result of this unauthorized copying, plaintiff has suffered injury to their reputation and a loss of income.

## **VIII.**

### **Request for Relief**

WHEREFORE, plaintiff requests that this court order defendants to:

- A. Cease and desist from making, selling and distributing copies of plaintiff's copper tiki torches;
- B. Notify all people who purchased these items, ordering an immediate recall at defendants' expense;
- C. Deliver to plaintiff all inventory, models, molds and unfinished pieces;
- D. Pay plaintiff compensation in the amount of three million dollars (\$3,000,000.00) for actual damages;

- E. Pay plaintiff a total of nine million dollars (\$9,000,000.00) as punitive damages;
- F. Pay plaintiff's attorneys fees and costs; and
- G. Take such other action as the Court deems just and proper.



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JURY DEMAND

Plaintiff demands a trial by jury.



DONALD P. EGGLESTON